

K40204



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ADT Facilities Management Inc.
File: B-236122.2
Date: December 12, 1989

DIGEST

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.
2. Where request for proposals provided that, in evaluating proposals, technical quality and price would be considered to be of equal importance, agency properly made award based on the higher rated, higher priced proposal since it reasonably determined that the technical advantage associated with higher rated proposal was worth the difference in price.
3. Protest that solicitation provisions which require the submission of certain information are unfair because they provide the incumbent contractor with an advantage is untimely where not raised prior to closing time for receipt of proposals.

DECISION

ADT Facilities Management Inc. protests the award of a contract to ICS Service Organization, Inc., under request for proposals (RFP) No. 02-PPB-WH-008-N-015, issued by the General Services Administration (GSA), for commercial facilities management services for the Joseph P. Addabbo Federal Building in Jamaica, New York. ADT argues that GSA improperly evaluated its proposal, and further maintains that as the lowest priced technically acceptable offeror it is entitled to the award.

We deny the protest in part and dismiss it in part.

The RFP contemplated the award of a fixed-price-award-fee contract, with a base period of 1-year, and 4 option years. The work solicited included facility management, operations and maintenance, elevator maintenance, maintenance repairs, architectural and structural maintenance, and janitorial and protective services. The RFP informed offerors that technical proposals and price would be given equal consideration in the overall evaluation. The technical criteria, in descending order of importance, were: (1) management and plan of operation, which included six subcriteria, and; (2) offeror's experience and qualifications, which included two subcriteria.

GSA received four proposals, all of which were included in the competitive range. Discussions were conducted with all offerors, and they all submitted best and final offers (BAFOs). ADT proposed the lowest total price of \$18,411,684 and received the second lowest score at 636. ICS's second low offer of \$25,181,242 received the lowest technical score of 536. In its evaluation report, the source evaluation board (SEB) recommended award to ADT, and forwarded its recommendation to the regional acquisition management staff. The staff concluded that award could not be made to ADT at that time because the solicitation contained obsolete Service Contract Act wage determinations and omitted several tasks that were needed to properly operate the facility and also because of numerous deficiencies in the ADT proposal, including the failure to include escalation factors for the option years and fringe benefits.

Subsequently, GSA issued several amendments to the RFP, conducted discussions, and solicited another round of BAFO's from all of the offerors. After reviewing these BAFOs, the SEB determined that another round of discussions was needed to address deficiencies that still existed in all the offerors' technical proposals. After completing this final round of discussions, BAFOs were again requested, and timely received from three of the four original offerors. ADT's proposal this time received a technical score of 475. It proposed a total price of \$27,717,938.13. ADT's score, which this time was the lowest, was due primarily to the evaluators' conclusions that the protester failed to propose sufficient class II guard service, or to provide for enough operation and maintenance supplies. The evaluators also were concerned that ADT did not have experience in providing commercial facility management services at a comparable facility, and expressed doubts that the protester had submitted a realistic price for elevator maintenance and for the reimbursable work line items. ICS was able to improve

its proposal so that it now received a technical score of 702. That firm offered a total price of \$30,881,635. The SEB found that ICS had submitted a superior proposal that was the most advantageous to the government considering both price and technical factors, and recommended that award be made to ICS. Award has been made to that firm.

ADT objects to the evaluation of its proposal. The protester points out that it is an experienced contractor who has submitted the low priced acceptable proposal, and would be bound to perform in accordance with the solicitation requirements regardless of any alleged deficiencies in that proposal. As far as the deficiencies listed by the agency are concerned, ADT maintains that they are either the result of the evaluators' misinterpretation of its proposal, involve minor matters, or are just wrong.

In reviewing protests like this against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159. Rather, the determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion. Id. Consequently, we will question an agency's evaluation only when the record clearly shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. Id.

The first major concern with ADT's proposal involved the SEB's conclusion that the protester's proposal did not clearly provide for sufficient hours of class II guards to meet the RFP requirement that the facility's emergency control center (ECC) be staffed 24 hours per day, 7 days per week. While the main body of ADT's proposal indicated that such coverage would be provided, according to the agency there was no corresponding reference to such coverage in ADT's required guard tour schedule, nor was there an item in its price proposal representing such coverage. ADT primarily argues that its tour schedule did indeed provide for ECC guard service and states that, in any event, it should not be downgraded here because it provided for the guards in the main body of its proposal.

We have reviewed ADT's final BAFO and we, like the agency, cannot find any reference in ADT's staffing schedule relating to 24-hour guard coverage for the ECC. Similarly, we find no reference to such coverage in the ADT price proposal. We therefore think that it was reasonable for the agency to downgrade the ADT proposal in this area. We do not believe that the agency was obligated to accept the

statement in the main ADT proposal concerning 24-hour coverage of the ECC, when that statement simply was not supported in other portions of the ADT proposal.

The next deficiency cited by the SEB concerned ADT's failure to include a comprehensive list of the equipment and supplies that would be needed to perform the operation and maintenance services, and the lack of a corresponding cost reference to these items in the price proposal. In this regard, the agency notes that ADT failed to provide for such needed items as material handling equipment (carts), a power scaffold, ladders exceeding 6 feet, and many supply items such as replacement ceiling tiles and light bulbs.

The protester responds that it is not practical or necessary to list at this time all the needed inventory items. ADT believes that it listed in its proposal the core supplies that would be used. In fact, the protester contends that it did list the required ladders and filters, and states that the other items would be purchased as needed during performance of the contract.

We find no basis here to object to the agency's judgment that this portion of the ADT proposal indicated that the firm did not fully understand its obligations under the RFP. The protester admits that it failed to list some of the needed items, or separately price them, and we are unable to find some of the items such as bulbs and tiles that it contends are listed. We simply do not agree with the protester's premise that it was sufficient for the firm to be aware of the need for particular supplies and to plan to purchase them later out of a general fund. The RFP required that these matters be described in the proposal so the agency could evaluate the firm's proposed approach. We think the agency properly downgraded ADT when that firm failed to list many of the needed supplies and equipment and their cost, or to describe in any detail how and exactly what supply items it proposed to purchase during performance.

ADT also was downgraded for lacking experience in providing commercial facilities management services at a facility similar to the Addabbo building. ADT contends that it has such experience and points to the portion of its proposal where the protester cited its performance of commercial facility management services for the Air Force at the David Grant Medical Center. GSA responds that it contacted the Air Force with regard to ADT's performance and states it was informed that that contract does not require ADT to provide elevator maintenance or full security services, nor is ADT responsible for repairing faulty equipment because most of

the operating equipment is currently under warranty. We have reviewed ADT's proposal, and while it does list commercial facilities management experience at a number of facilities, the only facility approaching the size of the Addabbo building is the Air Force medical center. GSA states that ADT is not in fact providing similar commercial facilities management services at that facility, and therefore does not have the experience claimed. Since ADT has not refuted this, we cannot conclude that GSA's determination that ADT lacked comparable commercial facilities experience was unreasonable.

GSA further downgraded the ADT proposal because the evaluators thought that the price set forth in the protester's proposal for elevator maintenance was unrealistically low, and that the proposal failed to provide at all for the required elevator inspection services. The evaluators based their conclusion that the elevator maintenance cost was unrealistic on a comparison of the current elevator maintenance costs at the Addabbo building, and those costs incurred at other similar facilities. ADT's proposed cost is approximately \$8,167 per month, including periodic testing. GSA states that it is currently paying in excess of \$17,000 per month, without testing for elevator maintenance at the Addabbo building.

ADT argues that GSA's current contract for elevator maintenance provides the contractor with an excessive profit. ADT contends that it could, as it has in the past on other jobs, negotiate a price reduction with the current maintenance contractor. Finally, ADT states that the cost for elevator inspection was not omitted, but included under the general heading of "purchased service fund" in its price proposal.

In view of the cost of the existing elevator maintenance contract, and the speculative nature of ADT's argument that it could negotiate a radical reduction in maintenance costs with the current elevator contractor, we find that the record supports GSA's determination that ADT's proposal was unrealistic and thus unsatisfactory in the area of elevator maintenance.

With regard to the cost of elevator inspection, it is the offeror's duty to include sufficiently detailed information in its proposal to establish that it meets that solicitation requirements. See AZTEK, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218. ADT admittedly did not include in its proposal any identified cost for elevator inspection, but rather allegedly included the cost in a general fund area of its

price proposal. We see no reason to disagree with GSA's determination that ADT's proposal was deficient in this regard.

The final matter which had a major impact on the scoring of the ADT proposal was the SEB's view that the protester's pricing for the reimbursable work authorization line items was "unconscionably low." The protester argues that its price for these items, which was 85 percent of the government estimate of \$1,785,130, was realistic. According to the protester, its broad experience in the area led it to the conclusion that the agency's higher estimate was inaccurate. While it is clear that the protester believes that the agency's estimate is inflated, it did not protest the inclusion of that estimate in the RFP until after it did not receive the award, nor did it include an explanation in its proposal as to how it could perform the required work at a lesser cost despite being informed during discussions that the agency considered its price too low in this area. Under the circumstances, we have no reason to disagree with the agency's conclusion concerning this aspect of the ADT proposal.

We have carefully considered the evaluation record in the context of all of the protester's arguments, and we do not believe the record shows that the evaluators' judgments concerning the scoring and the relative ranking of the ADT proposal were without a reasonable basis.

However, we note that throughout the protest, ADT argues that notwithstanding any defects that may exist in its proposal, it is an experienced firm that can do the job. The protester also expresses its concern in a general way about the fact that its score dropped significantly during the various stages of the evaluation process.

Since offerors are evaluated strictly based on the material submitted in their proposals, it is not relevant to the selection that the offeror may possess the necessary skill and experience to perform unless that is reflected in its proposal. DAVSAM Int'l, Inc., B-228429.5, Mar. 11, 1988, 88-1 CPD ¶ 252. As far as the different scores received by ADT at the two stages of the evaluation are concerned, we have recognized that different evaluators may have differing views concerning the merits of a proposal. See tg Bauer Assocs. Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. Similarly, the same evaluators may change their views concerning a proposal as the RFP is amended, discussions are held, and amended proposals are submitted during the

evaluation process. Our concern is that the final evaluation, the one upon which the selection is based, meets the tests of rationality and consistency with the RFP's evaluation criteria. See Jones & Co., Natural Resource Eng'rs, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555. As indicated above, we believe that the evaluation here meets those tests.

ADT also argues that it should have received the award since it submitted the low priced offer and its proposal was considered acceptable.

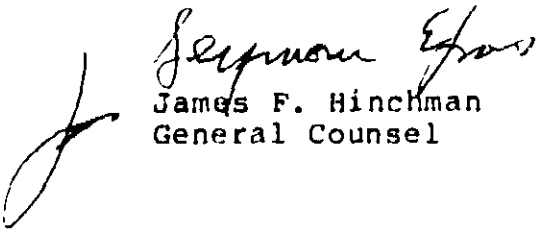
The RFP, however, did not provide for award on the basis of the lowest priced technically acceptable proposal. Instead, the RFP provided that technical and price factors would have equal weight, and that the offer representing the best combination of technical merit and price would be selected for award. We have consistently recognized that in a negotiated procurement, there is no requirement that award be made on the basis of lowest price unless the RFP in fact specifies that price will be the determinative factor. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. Thus, the contracting officer had the discretion to determine whether the technical advantage associated with ICS's proposal was worth its higher price. This discretion existed notwithstanding the fact that price was to be given equal consideration as an evaluation factor. Id. The judgment of the evaluators concerning the significance of differences in the proposals' technical merit is accorded great weight. Thus, we have consistently upheld award to technically superior, higher priced offerors so long as that result is consistent with the evaluation criteria, and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

As shown above, GSA found that ADT's offer had significant weaknesses. In fact, its technical score was more than 200 points less than that of the awardee. Even though ADT's price was low, the agency concluded that the deficiencies in the ADT proposal indicated that the firm did not understand the scope of the services required. In the agency's view, ICS's proposal was significantly superior, and represented only a relatively small increase in price. In view of the considerable differential in the technical scores between ICS and ADT, and the relatively small difference in price, we conclude that the contracting officer reasonably found that acceptance of ICS's higher priced proposal was more advantageous to the government.

ADT further argues that the solicitation provisions were unfair because the incumbent contractor, here ICS, had an inherent advantage in developing a technical proposal because of its experience in operating the facility. ADT points to those portions of the solicitation which require the submission of information bearing on the operation of the facility, and argues that such requirements unreasonably favor the incumbent who has first-hand access to the data.

This argument concerns alleged deficiencies apparent on the face of the RFP, and thus should have been raised prior to the closing date for receipt of proposals to be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989); Davis Contractors, Inc., B-232954 et al., Jan. 12, 1989, 89-1 CPD ¶ 40. Moreover, there is no requirement that an agency equalize competition with respect to advantages an incumbent contract may have so long as the advantages do not result from unfair action by the government. PECO Enterprises, Inc., B-232307, Oct. 27, 1988, 88-2 CPD ¶ 398.

Accordingly, the protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel